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13 **IN THE UNITED STATES DISTRICT COURT**

14 **FOR THE DISTRICT OF ARIZONA**

15 L.M.W., individually, and as the biological
16 father and on behalf of L.W., a minor,

17 Case No. 2:22-cv-00777- JAT

18 Plaintiff,

19 vs.

20 The State Of Arizona; Jonas Perry and Jane
21 Doe Perry, Husband and Wife; Anita
22 McDonald and John Doe McDonald, Wife and
23 Husband; Anna Apolinar and John Doe
24 Apolinar, Wife and Husband; Christina Gary
25 and John Doe Gary, Wife and Husband;
26 Brittany Scott-Membrila and John Doe
27 Membrila, Wife and Husband; Sonya Tyus
28 And James Tyus, Wife and Husband; A New
Leaf, Inc., and Arizona nonprofit corporation,

19 **PLAINTIFFS' RESPONSE TO
20 COURT ORDER [Doc 99]**

21 Assigned to the
22 Hon. James A. Teilborg

23 Defendant.

24 **I. Introduction**

25 The Court recently ordered Plaintiff L.M.W. to file a supplement to his motion to
26 seal (Doc. 93) addressing three issues. *See* Doc. 99. First, the Court requested briefing on
27 whether L.W. needs to be substituted in as an additional plaintiff in this case based on the
28

1 Court's belief that L.W. is no longer a minor. Second, the Court asked L.M.W. to explain
 2 what legal authority permits L.M.W. and L.W. to continue to be referred to solely by their
 3 initials if L.W. is now an adult. And third, the Court stated it would allow L.M.W. "to
 4 more robustly brief why the facts of this case should not be public record, particularly if
 5 L.W. is allowed to proceed by only his initials." Doc. 99, at 3.

6 The framing of the first two issues on which the Court requested additional briefing
 7 relies on an incorrect factual premise: that L.W. is no longer a minor. L.W. remains a
 8 minor under the age of 12.¹ Because L.W. is a minor, he does not need to be substituted
 9 in as an additional plaintiff in this case. L.W.'s continued status as a minor likewise
 10 necessitates that he still be referred to only by his initials. And, to prevent L.W.'s identity
 11 from being easily discovered, the court should also allow L.M.W. to continue to be known
 12 in the public record of this case by only his initials. Similarly, the court should grant
 13 L.M.W.'s motion seeking permission to file the unredacted copy of the state-court
 14 complaint under seal, just as it was filed under seal in the state court, because it contains
 15 the full names of other relatives of L.M.W. Absent redaction or the use of initials,
 16 pseudonyms, or descriptive titles—rather than actual names—to identify those relatives
 17 in the publicly-available copy of the complaint, L.M.W.'s anonymity will be
 18 compromised.

19 Thus, should the court grant the motion to seal the unredacted copy of the
 20 complaint, L.M.W. will contemporaneously file a copy of the complaint in the public
 21 record that redacts the names of L.M.W., L.W.'s mother, L.W.'s paternal grandmother,
 22 and L.W.'s paternal aunt—replacing those names with initials for L.M.W. and with the
 23 pseudonyms "Mother" for L.W.'s mother, "Paternal Grandmother" for L.W.'s paternal
 24 grandmother, and "Paternal Aunt" for L.W.'s paternal aunt—but that leaves unredacted
 25

26¹ Should the district court require proof of L.W.'s age, L.M.W. can submit appropriate
 27 proof upon request or court order in a manner that complies with Federal Rule of Civil
 28 Procedure 5.2(a). But L.M.W. does not believe L.W.'s continued status as a minor is a
 fact that is disputed by the defendants, who are fully aware that L.W. is still a minor.

1 the factual allegations that were blacked out in the copy of the complaint filed in the public
 2 record in the state court. This approach should alleviate the court's concerns about not
 3 sealing information that is central to the case while simultaneously protecting the identity
 4 of the minor, L.W.

5 **II. Analysis**

6 **A. L.W. does not need to be substituted in as a plaintiff in this case.**

7 The first point on which the Court requested additional briefing revolves around
 8 the question of standing. L.W. would only need to be substituted in as an additional
 9 plaintiff in this case if his father, L.M.W., lacks standing to maintain L.W.'s gross
 10 negligence, willful and wanton conduct/negligence, and section 1983 civil rights claims
 11 on L.W.'s behalf. Under Arizona law, “[e]ither parent may maintain an action for the
 12 injury of a child.” A.R.S. § 12-641. Thus, as L.W.'s father, L.M.W. has standing to
 13 maintain this action and represent his minor child, L.W., in prosecuting L.W.'s claims
 14 against the defendants. *See Reben v. Ely*, 146 Ariz. 309, 310, 705 P.2d 1360, 1361 (Ct.
 15 App. 1985) (“The purpose of § 12–641 is to specify who may bring an action to represent
 16 an injured child”). And L.M.W. also has standing to maintain his own, derivative loss
 17 of consortium claim. *See Howard Frank, M.D., P.C. v. Superior Ct.*, 150 Ariz. 228, 229,
 18 722 P.2d 955, 956 (1986) (“Arizona has joined those jurisdictions which allow recovery
 19 for loss of filial consortium of a minor child where the child has been severely injured by
 20 the negligence of a third party”). L.W. does not therefore need to be substituted in as an
 21 additional plaintiff in this case.

22 **B. Both L.W. and L.M.W. should continue to be referred to in this case solely
 23 by their initials.**

24 The fact that L.W. remains a minor also helps resolve the second point on which
 25 the court requested additional briefing. Both L.W. and his father, L.M.W., should continue
 26 to be referred to in publicly-filed case documents solely by their initials to prevent L.W.'s
 27 identity from being disclosed and thereby protect L.W. from the harassment, injury,
 28 ridicule, and personal embarrassment that will likely result if L.W. is publicly identified.

1 Generally, documents filed with the court that contain the name of an individual
 2 known to be a minor may only include the minor's initials. Fed. R. Civ. P. 5(a)(3). This
 3 procedural rule "acknowledges the privacy interests of minor children by allowing parties
 4 to reference minors only by their initials." *J.W. v. D.C.*, 318 F.R.D. 196, 199 (D.D.C.
 5 2016). In cases involving a minor's parent, however, the protection provided by this rule
 6 "would be eviscerated unless the parent was also permitted to proceed using initials." *Id.*

7 Additionally, in the Ninth Circuit parties may proceed anonymously or through the
 8 use of pseudonyms "when special circumstances justify secrecy" or "when nondisclosure
 9 of the party's identity is necessary to protect a person from harassment, injury, ridicule or
 10 personal embarrassment." *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058,
 11 1067-68 (9th Cir. 2000) (cleaned up). Thus, a party may preserve his or her anonymity
 12 when "the party's need for anonymity outweighs prejudice to the opposing party and the
 13 public's interest in knowing the party's identity." *Id.*

14 Several courts in the Ninth Circuit have concluded that when a case involves
 15 allegations of sexual assault, "any prejudice the defendant may face does not favor
 16 requiring" the alleged victim of the assault "to disclose her [or his] identity, and that the
 17 public's interest in allowing alleged victims of sexual assault to proceed anonymously
 18 outweighs any public interest" in knowing the victim's identity. *Doe K.G. v. Pasadena*
Hospital Ass'n, Ltd., No. 218CV08710ODWMAAX, 2019 WL 1612828, at *1 (C.D. Cal.
 19 Apr. 15, 2019) (collecting cases). And the Ninth Circuit has a "tradition of not revealing
 20 names of the victims of sexual assault," which it honors by using initials in its decisions
 21 to protect the privacy of those victims. *Jordan v. Gardner*, 986 F.2d 1521, 1525 n.4 (9th
 22 Cir. 1993).

24 Here, L.W. is a minor and therefore any document filed with the court that contains
 25 his name may only include his initials, unless this Court orders otherwise. Fed. R. Civ. P.
 26 5.2(a)(3). Under the special circumstances of this case, which involves allegations that
 27 L.W. was sexually abused, it is particularly important that L.W.'s identity not be disclosed

1 to protect him from the severe personal embarrassment and injury, as well as the possible
 2 harassment and ridicule, he will likely suffer if his identity is revealed. *See Pasadena*
 3 *Hospital*, 2019 WL 1612828, at *1. Thus, L.W. should continue to be identified in this
 4 case only by his initials.

5 For the same reason, L.W.’s father should likewise continue to be referred to in
 6 publicly-filed case documents solely by his initials “L.M.W.” As other courts have
 7 recognized in cases involving minors, “a parent’s identity, if disclosed, could jeopardize
 8 the child’s confidentiality.” *J.W.*, 318 F.R.D. at 199 (cleaned up). Thus, to protect L.W.’s
 9 anonymity and privacy rights, the court should permit L.M.W. to continue to be known
 10 only by his initials in the publicly-filed documents for this case.

11 **C. The unredacted copy of the complaint should still be filed under seal
 12 because it includes the full names of three of L.W.’s relatives, whose
 13 identities in turn can be used to identify L.W.**

14 The third point on which the Court invited additional briefing is why the facts of
 15 this case should not be public record if L.W. is allowed to proceed by only his initials.
 16 L.M.W. initially moved for leave to file the unredacted copy of the complaint under seal
 17 with this Court because the state court had previously ordered that the unredacted copy of
 18 the complaint be filed under seal when the case was initiated. *See* Minute Entry filed Mar.
 19 28, 2022, attached hereto as Ex. 1. L.M.W.’s motion to seal was motivated by a desire to
 20 protect L.W.’s privacy interests. But the protection of those interests afforded by allowing
 21 L.W. and L.M.W. to be known only by their initials will be eviscerated if a completely
 22 unredacted copy of the complaint is filed in the public record of this case because the
 23 unredacted copy of the complaint sealed by the state court discloses the full names of
 24 L.W.’s mother, paternal grandmother, and paternal aunt—all of whom are not parties to
 25 this case.

26 The Ninth Circuit has used pseudonyms to conceal the identity of both parties and
 27 nonparties to a case where necessary “to protect a person from harassment, injury, ridicule
 28 or personal embarrassment.” *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1980).

1 As explained above, this case is an “unusual case” in which the use of pseudonyms or
 2 initials are necessary to protect the privacy of a minor, L.W., who was the victim of sexual
 3 abuse and whose identity could be easily discerned if the actual names of his close
 4 relatives who are identified in the unredacted copy of the complaint are not changed in the
 5 copy of the complaint filed in the public record.

6 Accordingly, L.M.W. requests that the Court permit him to file the unredacted copy
 7 of the complaint under seal, and contemporaneously file a copy of the complaint in the
 8 public record that redacts the names of L.M.W., L.W.’s mother, L.W.’s paternal
 9 grandmother, and L.W.’s paternal aunt, replacing those names with initials for L.M.W.
 10 and with the descriptive-title pseudonyms “Mother” for L.W.’s mother, “Paternal
 11 Grandmother” for L.W.’s paternal grandmother, and “Paternal Aunt” for L.W.’s paternal
 12 aunt.² All other materials that were blacked out in the redacted copy of the complaint filed
 13 in the public record in the state court would be left unredacted in the copy of the complaint
 14 filed in the public record in this court. This proposed approach appropriately balances
 15 L.W.’s need for anonymity and the interests weighing in favor of open judicial
 16 proceedings. No information central to the case will be sealed other than the actual names
 17 of the L.W.’s relatives that could be used to determine L.W.’s identity if not redacted from
 18 the public record. And, as the Fifth Circuit has aptly explained: “Party anonymity does
 19 not obstruct the public’s view of the issues joined or the court’s performance in resolving
 20 them. The assurance of fairness preserved by public presence at a trial is not lost when
 21 one party’s cause is pursued under a fictitious name.” *Doe v. Stegall*, 653 F.2d 180, 185
 22 (5th Cir. 1981).

23 **III. Conclusion**

24 For the foregoing reasons, L.M.W. requests this court grant his motion to file the
 25 unredacted copy of the complaint under seal, and further permit him to file a redacted copy

26
 27 ² Although the unredacted copy of the complaint primarily refers to L.M.W. by his initials,
 28 there are a few instances where the complaint inadvertently includes his first name. It is
 those uses of his first name that L.M.W. seeks to redact and replace with his initials.

1 of the complaint in the public record that only removes the names of L.M.'s father, mother,
2 paternal grandmother, and paternal aunt, and replaces those names with initials for his
3 father, the pseudonym "Mother" for his mother, the pseudonym "Paternal Grandmother"
4 for his paternal grandmother, and the pseudonym "Paternal Aunt" for his aunt.

5 RESPECTFULLY SUBMITTED this 27th day of October, 2023.
6

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14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on October 27, 2023, I electronically transmitted the attached
16 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a
17 Notice of Electronic Filing to the following CM/ECF registrants:

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